

No. 9(1) 81-6Lab-15075.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and the management of M/s. Saraswati Ceramics and Refractories Pvt., Ltd., Plot No. 105, Sector 25, Ballabgarh.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD

References Nos. 340/80, 332/80, 334/80, 336/80, 339/80

between

Sarvshri Kamal Singh, Bhuller, Tirloki Nath, Ram Lakan, Ram Sunder, workmen and the Respondent Management of M/s. Saraswati Ceramics and Refractories Private Limited, Plot No. 105, Sector 25, Ballabgarh.

Shri Sunehari Lal, for the workmen.

Shri D. D. Aggarwal, for the respondent management.

AWARD

The references Nos. 340/80, 332/80, 334/80, 336/80 and 339/80 have been referred to this Court by the Hon'ble Governor of Haryana, — *vide* his order No. ID/FD/52/80/39828, dated 4th August, 1980, ID/FD/52-80/39780, dated 4th August, 1980, ID/FD-52-80/39792, dated 4th August, 1980, ID/FD/52-80/39804, dated 4th August, 1980, ID/FD/52-80/39822, dated 4th August, 1980, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Kamal Singh, Bhuller, Tirloki Nath, Ram Lakan, and Ram Sunder, workmen and the respondent management of M/s. Saraswati Ceramics and Refractories Private Limited, Plot No. 105, Sector 25, Ballabgarh. The terms of the references were :—

Whether the termination of services of the workmen S/Shri Kamal Singh, Bhuller, Tirloki Nath, Ram Lakan, and Ram Sunder were justified and in order ?
If not, to what relief are they entitled ?

After receiving these references, notices were issued to the parties, they appeared and filed their pleadings in the Court. The case of the workmen according to their demand notices, claim statements and rejoinders is that they are working in the respondent factory for the last 7/8 years. There is a union in the factory and they raised general demand notice against the respondent which was settled by the Deputy Labour Commissioner, Faridabad for bonus, uniform etc. There were 14 active union office bearers in the factory who raised the demand of different type against the respondent. On 1st February, 1980 the respondent stopped all the 14 workmen at the gate for which the workmen complaint before the Labour authorities on which there was a settlement on 5th March, 1980. According to that settlement the respondent took all the workmen on duty, but began harassing the workmen for one reason or the other. At last they stopped all the workmen on 12th March, 1980 and the workmen were not paid the salary for the month of January, 1980. The workmen made a complaint to the Conciliation Officer for stopping the workmen on the gate. The respondent prepared a scheme against all the workmen and they put a broken box in the quarters of the workmen which are situated just behind the factory and declared the workmen thieves and on that charge of theft they called the police and the police took the workmen at the police station, Ballabgarh. The police beaten all the workmen very severely and the incharge of the police told all the workmen before the owner of the factory that either you resign from the service upto 12.00 noon next day otherwise, you shall be treated in same manner again. The owner of the factory brought the workmen in the factory and got sign the papers which

were already ready to sign and gave the accounts of the workmen on the same day. The workmen signed all the papers put before them due to fear of the police as told them by the police in charge so there was no alternative except to sign these papers to save their bodily torture as the police had made with the workmen. So the owner of the factory took papers signed under threat and duress of the police. The workmen were terminated due to their union activities and demand raised by them under the police threat so it was illegal action of the respondent management against the workmen and the workmen are entitled for their reinstatement with full back wages and continuity of service.

The case of the respondent management according to its written statement is that the workmen resigned on 15th March, 1980 on their own sweet-will, which were accepted by the respondent and the workmen took their full and final on the same day and gave the receipt in the presence of Shri Sunehari Lal, Labour Leader, who signed the same. The respondent had denied all the allegation in its written statement and stated that the workmen took their full and final on their own accord.

But on 3rd November, 1980, when the case fixed for framing the issues the management dis-appeared and my predecessor proceeded *ex parte* against the respondent management and *ex parte* award was also sent in favour of the workmen on 30th November, 1980. After that the respondent management filed an application dated 16th December, 1980 for setting aside the *ex parte* order, which was set aside by the court on 21st January, 1981.

On the pleadings of the parties, the following issues were framed :—

- (1) Whether the termination of services of the workmen is proper, justified and in order ? If not, to what relief are they entitled ?
- (2) Whether it is a case of voluntarily resigning of jobs of the respondent by the workmen ? If so, to what effect ?
- (3) Relief ?

According to the order of my predecessor No. 2 shall be treated as preliminary issue and be decided first.

After framing the issue on 5th February, 1981, there is a order of consolidation dated 3rd March, 1981 on the statement of the parties the references No. 340/80, 332/80, 334/80, 336/80, 339/80 were consolidated as all the references based on the same facts and law. So the references were consolidated into one and there is order that the evidence shall be recorded in Reference No. 340/80 of Shri Kamal Singh. So I have to decide all the references in one reference. My issue-wise findings are as under :

Issue No. 2 :

According to the orders of my predecessor issue No. 2 has been treated as preliminary issue and decided first. Issue No. 2 is whether the workmen resigned voluntarily from their jobs.

On the issue the representative of the management argued that the workmen were not terminated on the basis of union activities rather they resigned on their own will and took their full and final on 15th March, 1980. There was no threat and duress at the time of resignation or taking the full and final. The representative of the management referred the statements of the workmen in which they have said that at the time of resignation in the factory no police person were present. So when there was no police there at the time of signing the resignation then it was not a threat and duress or force of the police as alleged by the workmen in the demand notices and claim statements. It is a after thought story which cannot be believed. He again referred the receipts of full and final accounts on which Shri Sunehari Lal, Labour Leader has also witnessed of taking their full and final accounts. He

argued that the workmen do not complaint against this threat and duress to any authority. He further argued that on 25th April, 1980 the management was called by the Deputy Labour Commissioner for hearing the complaint of the workmen but the workmen did not appear before him and he filed the complaints. He referred the statement of Shri D.D. Aggarwal, MW-1 who is manager of the factory and who has stated in the statement that on 5th March, 1980 there was a settlement about the demands raised on 7th February, 1980 before the Labour -Cum-Conciliation Officer. The copy of which is Ex. M-1. On 6th March, 1980 the workmen resumed their duties as per settlement Ex. M-1 and they continued working till 10th March, 1980 on 11th March, 1980 their factory was closed because of off day and on 12th March, 1980 these 14 workers did not join their duties. When he reached the factory these workmen told him that either their pay should be raised or their final accounts should be given to them. He demanded their resignation on 13th March, 1980 and they resigned on the asking of the manager. The resignation of Shri Kamal Singh, Ex. M-1, Shri Bhuller, M-5, Tirloki Nath, Ex. M-4, Ram Lakan, M-3, Ram Sunder, Ex. M-2. The resignation were sent to the Director of the company, who accepted them vide his orders which are Ex. M-6, M-10, M-9, M-8, M-7 respectively. On 11th March, 1980 these workmen came to him and collected their accounts which was settled on that day and paid on 14th March, 1981. The final receipts of the payments are Ex. M-11, M-15, M-14, M-13, M-12, respectively. The receipts of the payments are also signed by Shri Sunehari Lal, workmen's representative. So in this way the workmen collected their full and final account from the management. He further stated that according to Ex. M-1 the Deputy Labour Commissioner, Faridabad was named sole arbitrator who fixed 25th April, 1980 for hearing, on which day none of the workmen came present before him. The representative of the management argued that after taking the full and final and giving their resignations will fully the workmen are not entitled for any relief. After giving the resignation voluntarily the after thought story of the workmen can not be believed and it is proved after looking the resignations on the file that the workmen resigned of their own will and took their full and final so the references is bad in law. He further argued if there was any beating of the workmen as they have alleged, they should have medically examined and they should have produced before the court which is not done by the workmen. So the story of the workmen can not be believed.

The representative of the workmen argued that all the fourteen workmen whose references are pending in this Court were terminated by the respondent management due to their union activities in the factory. The representative, of the management terminated 14 workmen in one day clearly shows that how they were terminated. The fourteen workmen did not resigned in one day, so it shows that the resignation were taken under threat and duress of the police. The workmen are working in the factory since last seven or eight years as they have stated in their rejoinder and there was a union in the factory. They used to raise the demands in the factory for their benefits. They raised one demand in the year 1978 which was settled by the Labour authorities on 7th April, 1978 which is Ex. M-4. The settlement itself shows that the respondent has accepted seven demands of the workmen on the demand notice dated 12th January, 1978. In this way they again raised the demand notice as admitted by the respondent witness Shri D.D. Aggarwal, Manager as MW-1 on 7th February, 1980 on which there was a settlement before the Conciliation Officer on 5th March, 1980. The copy of the settlement is Ex. M-1. According to this settlement the respondent had agreed to give work to these fourteen workmen and for their wage of the off days it was decided that Shri Dharmender Nath, Deputy Labour Commissioner deded the matter which was to be binding of both the parties. The demand was raised because the respondent stopped the workmen on the gate on 1st February, 1980 because they were demanding the bonus for the year 1978-79. So by the intervention of the Labour authorities the workmen resumed their duty on 6th March, 1980 according to the statement of MW-1. But the respondent harassed the workmen in one way or the other and they again stopped the workmen on 12th March, 1980 on the gate. After stopping these workmen on the gate these workmen made the complaint of the same stoppage to the Conciliation Officer which is Exhibit W-1 and send the copies of the same to the other authorities by registered letters which is a Exhibit 2/1. Then the respondent prepared as cherne to get of the workmen and threw a broken box in the quarters of the workmen which are adjacent to the factory and situated at

the back and alleged these workmen as thieves. The respondent called the police and the police took all these workmen to the Police Station, Ballabgarh and gave severe beating in presence of the owner of the factory. The Police Incharge told the workmen in the presence of the owner of the factory that either they will resign from the job upto 12.00 a.m. next day or otherwise you inform us and we will put them again in the same way till they sign on the papers. The respondent management took all the workmen from the Police Station to the factory and put the papers before them which were already ready for signatures. and they got sign these papers under the threat of the police and the workmen had no alternative except to sign these papers to save their skin from physical torture and they signed the same. He further argued that the resignation are written in the same ink and same hands, but the date is given on different ink and hands. On the resignations they have shown the date 13th March, 1980 and on the receipts its 15th March, 1980. In the written statement the respondent has written that the workmen resigned on 15th March, 1980 and the same were accepted on the same day and they took their final on same day i.e. 15th March, 1980 and further again in letter to the Conciliation Officer, dated 13th May, 1980 which is Ex. WW-5/1. They have shown 15th March, 1980 the date of resignation and acceptance and in the statement of witness of the respondent he has stated that on 12th March, 1980 all the fourteen workmen met him at the factory gate and they told him either the pay should be raised or their final accounts be given to them and he demanded the resignation of the workmen. The workmen gave the resignation on 13th March, 1980 and took their full and final on 15th March, 1980. He further put forward the arguments and shown me Ex. WW-4/1 the proceedings of the Conciliation Officer in which also they have stated before the Conciliation Officer that these 14 workmen resigned of their own will on 15th March, 1980 and on the same day these were accepted and the workmen took their full and final accounts. In this way these documents shows that the documents are fabricated and after thought. On one place the same respondent says that the resignation was taken on 13th March, 1980. and on the other place they says that the resignation were taken on 15th March, 1980. It shows that the resignation were not given voluntarily, but by force and duress and there was no date on the resignations and receipts and they have put the dates afterwards. So the resignations were taken under duress and threat and after given these resignations under threat, the workmen made the complaints to the Labour authorities including the Labour Commissioner on 15th March, 1980 and sent the same through registered letters. The complaints is Ex. W-2 and on those complaints the Labour Inspector sent the notice to the respondent, —*vide* Ex. W-3 and called the respondent in his office for 18th April, 1980. The respondent did not come present in the office and after that the Labour Inspector advised the workmen to give the demand notice so after that date the workmen submitted their demand notices on 30th April, 1980. He further argued that the workmen did not take any action after giving the resignation is totally false. The workmen approached every authority for their help. The workmen has called the clerk of the Labour Officer who has come in the court as WW-4 Shri Mohinder Nath Mehta, Assistant, Labour Office, Ballabgarh and he submitted that they received the complaints, dated 15th March, 1980 and they issued the notice to that complaint twice, but no body came present from the side of the respondent. This shows that after the resignations and receipts taken under the force and threat and the workmen approached the proper authority for their complaints, who advised than to submit their demand notices and according to their advise they submitted the demand notice as before this court. So the resignations and receipts taken under threat and duress cannot be considered as referred in AIR-1975—Page 333 in case N. Ethirajulee Naidu vs. K.R. Chinni Krishnan Chettian" admission by a person that he signed on resignation and full and final receipts etc.under threat and under duress is admission of document in the eye of law. And the claimant admitted their signatures the documents under threat and tortured in the custody of the Police. It is proved that there was a union in the factory and these 14 workmen were active member of the union and raised demand notice for the benefits of the workmen and there are settlement on their demand before the Deputy Labour Commissioner and Conciliation Officer. So it is clear that the workmen had not resigned of their own will, but due to union activities. The witness of the respondent MW-1 has admitted this fact that their was demand notice of the workman and

were settled by the labour authorities after the admission of the respondent witness of this fact it is clear that there were some demand notice of the workmen and the workmen who were terminated by the force and threat are the active members of the union. So there is no need of any proof after the admission of the respondent witness. According to the witness of the respondent the workmen met him out side the gate on 12th February, 1980 and the respondent witness asked them to resign then why the resignations were not taken on the same day, why on the next day. The workmen want jobs and they are out of work. There was no reasoning and no ground why these 14 workmen resigned on the same day, it clears how they resigned under the threat.

After hearing the arguments of both the parties and going through the whole file, I am of the view that the plea taken by the respondent can not be believed as argued by the representative of the workman. There is a force in the arguments put forward by the workmen's representative and in the doubtful circumstances, it is clear that the resignations were taken by the respondent under threat and duress and they have not given of their own will. It is proved on the file that there was a union in the factory and the workmen terminated are their active members. They raised certain demands for the benefits of the workmen which were settled by the labour authorities. So it is clear that resignations of 14 workmen were taken under threat and duress. Usually the lot of workmen did not resign on one day. It also create a doubt in the mind why they resigned and after resignation, they made a complaint to the Labour authorities who called the respondent to hear, but the respondent fails to appear before the Labour authorities. Under these circumstances I hold that the resignations were not given voluntarily by the workmen but taken under threat and duress by the respondent. So I decide this issue in favour of the workmen and against the respondent.

Issue No. 1 :-

Issue No. 1 is as per reference ? After deciding issue No. 2 against the respondent there is no need to give another opportunity to any party. When issue No. 2 has been decided against the respondent as discussed above and the resignations were taken under threat and duress so it is not a case of resignations of the workmen of their own will, but it was termination of the workmen, which is not justified and proper, so the workmen are entitled for their reinstatement and continuity of services and with full back wages.

No order as to cost. This be read in answer to this reference.

The 1st December, 1981.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 3466, dated the 18th December, 1981.

Forwarded (four copies) to the Commissioner and Secretary to Govt. of Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.